IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 20376 of 2007(A)

PETITIONER:

LIJA P.V., 'JYOTHI',
KEEZHUR P.O., IRITTY.

BY ADV. SRI.M.VIJAYAKUMAR

RESPONDENTS:

1. THE STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
TRIVANDRUM.

2. DIRECTOR OF PUBLIC INSTRUCTIONS, TRIVANDRUM.

3. DISTRICT EDUCATIONAL OFFICER, THALASSERY.

4. ASSISTANT EDUCATIONAL OFFICER, IRITTY.

5. C.LISHA, VAZHUNNAVAR'S U.P.SCHOOL,
KEEZHUR, IRITTY, KANNUR DISTRICT.

6. MANAGER, VAZHUNNAVAR'S U.P.SCHOOL,
KEEZHUR, IRITTY, KANNUR DISTRICT.

BY ADV. SRI.GRASHIOUS KURIAKOSE
SMT.K.K.CHANDRALEKHA
SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
GOVERNMENT PLEADER SRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the appointment order dated 19.6.2006.

Ext.P2: True copy of the proceedings of the 4th respondent dated 16.8.2006.

Ext.P3: True copy of the order of the 3rd respondent dated 7.11.2006.

Ext.P4: True copy of the order of the 2nd respondent dated 22.1.2007.

Ext.P5: True copy of the order No.26476/P3/07/G.Edn. dated 13.6.2007.

Ext.P5(a): True copy of the appointment order of the petitioner.

Ext.P5(b): True copy of the G.O.(Rt)No.3765/02/GED dated 29.10.2002.

Ext.P5(c): True copy of the G.O.(Rt)No.3438/2004/GED dated 7.8.2004.

Ext.P5(d): True copy of the G.O.(Rt)No.1297/2007/GED dated 22.3.2007.

// True copy //

P.A. to Judge

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A.K.BASHEER, J.

W.P.(C)No.20376 OF 2007

Dated this the 2nd day of August, 2007

JUDGMENT

The short question that arises for consideration in this writ petition is whether the petitioner, who is a Lower Primary School Assistant, is entitled to impugn or challenge the approval of appointment of respondent no.5 as Upper Primary School Assistant on the ground that such approval may result in her retrenchment.

2. A brief reference to the essential facts is necessary to consider the question of sustainability of the contentions raised by the petitioner.

3. It is not in dispute that petitioner got appointment as Lower Primary School Assistant with effect from June 19 2006. She has got Teachers' Training Certificate to her credit and therefore she is qualified to be appointed as Lower Primary school Assistant. Her appointment was approved by the department.

4. It is also beyond controversy that Sri.Prasanth Kumar (he is not a party in this proceeding) who is a graduate with B.Ed. was

appointed in the school as Lower Primary School Assistant with effect from June 6, 2000. His appointment was also approved.

5. A vacancy of Upper Primary School Assistant arose in the school on March 31, 2006. The said vacancy was filled up by the manager by appointing respondent no.5 with effect from June 6, 2006. According to the manager, he had shifted Sri.Prasanthkumar from the Upper Primary Section of the school to the Lower Primary Section in order to facilitate the appointment of respondent no.5. The consequence was that petitioner who is admittedly the junior most Lower Primary School Assistant, faced threat of retrenchment as there occurred reduction of one post of Lower Primary School Assistant after the shifting of Sri.Prasanth Kumar to the Lower Primary Section. Petitioner takes exception to the action of the manager in shifting Sri.Prasanth Kumar from the Upper Primary Section to the Lower Primary Section. According to the petitioner, the said endeavor by the manager was intended to defeat the legitimate claim of the petitioner to continue as Lower Primary School Assistant.

6. As noticed earlier, petitioner had joined service only on

June 19, 2006, whereas respondent no.5 was appointed as Upper Primary School Assistant with effect from June 6, 2006. Obviously therefore, petitioner is junior to respondent no.5. They belong to two different categories also. The grievance of the petitioner is that the manager had spoiled her chances to continue in service by shifting Sri.Prasanth Kumar from Upper Primary Section to the Lower Primary Section. The contention of the petitioner is that the process of shifting carried out by the manager is illegal and unsustainable. Is the above contention legally tenable?

7. It is not in dispute that Sri.Prasanth Kumar was appointed as Lower Primary School Assistant way back in the year 2000. It is on record that he had been taking classes in the Upper Primary Section for sometime, though it is not clear since when he had been doing so. Anyhow, it is now conceded that Sri.Prasanth Kumar was shifted from the Upper Primary Section to the Lower Primary Section to accommodate respondent no.5 as UPSA. According to the petitioner, the manager could not have shifted Sri.Prasanth Kumar to the Lower Primary Section to create a vacancy to accommodate respondent no.5. In my view, even if

there was a process of shifting, the petitioner cannot impugn the approval of appointment of respondent no.5 as Upper Primary School Assistant.

8. It is contended by learned counsel for the petitioner that a graduate with B.Ed. cannot be appointed as a Lower Primary School Assistant after the amendment of Rule 3 in Chapter XXXI KER which came into effect from June 8, 2000. He lays heavy emphasis on this aspect drawing support from Ext.P3 order issued by the District Educational Officer. Though the order of the District Educational Officer was confirmed by the Director of Public Instruction in Ext.P4 order, the Government had reversed it in Ext.P5 order.

9. While allowing the revision petition preferred by respondent No.5, the Government in Ext.P5 order has held that her appointment as UPSA is liable to be approved. The said order is under challenge in this writ petition. There is a further prayer to issue a writ of mandamus to the manager not to terminate petitioner's service.

10. In this context, it may be pertinent to note that on June

6, 2000, when Sri.Prasanth Kumar was appointed as LPSA, the then prevailing rules did not prohibit such an appointment. In other words, a graduate with B.Ed. was entitled to be appointed as Lower Primary School Assistant prior to the amendment. Similarly, shifting of a teacher from Lower Primary to Upper Primary section was never prohibited. But it is contended by the petitioner that shifting of a graduate Upper Primary School Assistant to Lower Primary Section is impermissible under the Rules. If at all such shifting was possible, it could only be in favour of a Rule 51A claimant, and under any circumstances, Sri.Prasanth Kumar could not have been shifted to the Lower Primary Section.

11. The above contention is answered by respondent No.5 contending that Sri.Prasanth Kumar was a teacher continuing in service as Lower Primary School Assistant ever since his appointment. Even assuming the manager had, in the course of some work arrangement, asked Sri.Prasanth Kumar to take classes in the Upper Primary Section, it cannot be said that he had ceased to be a Lower Primary School Assistant. Admittedly, Sri. Prasanth

Kumar was appointed as a Lower Primary School Assistant in the school prior to the amendment to Rule 4 in Chapter XXXI KER, by which it was postulated that only T.T.C. holders can be appointed as L.P.S.A's. He had continued as a Lower Primary School Assistant, though for a short period he had been shifted to the Upper Primary Section on a working arrangement.

12. Learned counsel for the petitioner has invited my attention to some of the orders issued by the Government regarding the process of “shifting” of Lower Primary School Assistants as Upper Primary School Assistants. In particular he refers to an order dated July 3, 2007 in G.O.(MS)133/07/G.Edn. and to clause 5 thereof. He also points out that in G.O.(Rt) No.5405/2000/G.Edn. there is clear indication that “Shifting” is not permissible. I do not think that the above orders have any relevance to the case on hand.

13. However, learned counsel for respondent no.5 has to drawn support from Ext.R5(d) dated March 22, 2007 in which the Government has taken the stand that there is no provision in the rules interdicting the management of an aided school from shifting

a Lower Primary School Assistant as an Upper Primary School Assistant and vice versa. Learned counsel further points out that the order dated July 3, 2007 may not have any retrospective effect before which Ext.P5 had been issued.

14. As noticed already, Sri.Prasanth Kumar had been appointed as a Lower Primary School Assistant on June 6, 2000, prior to the amendment brought into Rules 3 and 4 of Chapter XXXI KER. At that time there was no prohibition in a B.Ed. graduate being appointed as a Lower Primary School Assistant. Though it is conceded by the manager that Sri.Prasanth Kumar had been taking classes in the upper primary section also for some time on a working arrangement, according to the Manager Sri.Prasanth Kumar had continued as a Lower Primary School Assistant. He was shifted to Lower Primary section when a vacancy of UPSA had arisen in the school on March 31, 2006. Respondent No.5 was appointed against the said vacancy with effect from June 6, 2006. The petitioner was appointed as a Lower Primary School Assistant only with effect from June 19, 2006.

15. The mere fact that petitioner was likely to be retrenched

due to reduction of one post of LPSA will not, in my view, enable her to challenge the appointment of respondent No.5 as UPSA. So long as there is nothing in the statute which prohibits shifting of an LPSA to the Upper Primary section on working arrangement, especially prior to the amendment, it cannot be said that Sri.Prasanth Kumar, who had admittedly been appointed as a Lower Primary School Assistant, could not have been allowed to continue as such for the simple reason that he had taken classes in the upper primary section on a working arrangement.

16. Government had considered the relevant aspects of the issue in its true perspective. I do not find any illegality or irregularity in the view taken by the Government in Ext.P5 order. Therefore, the prayer to quash Ext.P5 cannot be sustained or allowed.

Writ petition fails. It is accordingly dismissed.

A.K.BASHEER, JUDGE

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